

9
No. 91-1229

Supreme Court, U.S.

FILED

APR 27 1992

OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, BY AND THROUGH
INTERNAL REVENUE SERVICE, PETITIONER

v.

BRUCE J. McDERMOTT AND BETTY McDERMOTT
AND ZIONS FIRST NATIONAL BANK, N.A.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT*

REPLY BRIEF FOR THE UNITED STATES

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-1229

UNITED STATES OF AMERICA, BY AND THROUGH
INTERNAL REVENUE SERVICE, PETITIONER

v.

BRUCE J. McDERMOTT AND BETTY McDERMOTT
AND ZIONS FIRST NATIONAL BANK, N.A.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

Respondent concedes (Br. in Opp. 6) that the question presented in this case is a recurring one of substantial administrative importance. Respondent also concedes (*id.* at 10) that the decision in this case conflicts directly with the decision of the Supreme Court of Iowa in *Iowa Fair Plan v. United States*, 257 N.W.2d 626 (1977). Certiorari review is warranted for these reasons alone. See Sup. Ct. R. 10.1(a).

While respondent concedes (Br. in Opp. 9, 12) that the decision in this case also conflicts with the decision in *MDC Leasing Corp. v. New York Property Insurance Underwriting Association*, 450 F. Supp. 179 (S.D.N.Y.

1978), respondent fails to acknowledge that *MDC Leasing* was affirmed by the Second Circuit. 603 F.2d 213 (1979). Similarly, the district court decision in *United States v. Graham*, 96 F. Supp. 318 (S.D. Cal. 1951), the reasoning of which also conflicts with the decision in this case (see Br. in Opp. 9), was affirmed by the Ninth Circuit, under the name of *California v. United States*, 195 F.2d 530, cert. denied, 344 U.S. 831 (1952).

The decision of the court of appeals thus conflicts with decisions in two other circuits and with the decision of a State Supreme Court. For these reasons, and for the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

APRIL 1992